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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,337	07/17/2003	Shinji Seki	SEKI3002/REF	8659

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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/620,337	SEKI ET AL.	
	Examiner	Art Unit	
	Carolyn A Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7-17-03</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 & 12-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Orthoefer (Rice Bran Oil article). The particulars of the claims are disclosed on Table 1, page 63, 1st full paragraph in column 2 and 1st 7 lines of column 3 & Table 4. The deodorizing treatment of claim 11 is a process limitation, carrying no weight in the product claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yokomichi (5,514,405) in light of Orthoefer.

Yokomichi discloses frying oil containing sugar fatty acid ester and polyglycerol fatty acid ester (abstract). At column 4, lines 24-30 the oils used in the product include rice bran oil. The claims appear to differ from

Yokomichi in the recitation of the specific properties of rice bran oil.

Orthoefer teaches that rice bran oil contains all of the features of claim 1.

Thus with the reference before him, it would have been obvious to expect the oil composition of Yokomichi to possess all of the features of the claims when the rice bran oil of Orthoefer is selected as the frying oil.

Claims 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Yokomichi as further evidenced by Orthoefer.

Yokomichi discloses frying oil containing sugar fatty acid ester and polyglycerol fatty acid ester (abstract). At column 4, lines 24-30 the oils used in the product include rice bran oil. Orthoefer is relied upon for evidence that rice bran oil contains all of the features of claim 1. The oil composition of Yokomichi has all of the features of the claims when the rice bran oil of Orthoefer is selected as the frying oil.

Claims 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Yokomichi in light of Orthoefer and further as evidenced by Schwartzberg.

Yokomichi discloses frying oil containing sugar fatty acid ester and polyglycerol fatty acid ester (abstract). At column 4, lines 24-30 the oils used in the product include rice bran oil. Orthoefer is relied upon for

evidence that rice bran oil contains all of the features of claim 1. The oil composition of Yokomichi has all of the features of the claims when the rice bran oil of Orthoefer is selected as the frying oil. As to the HLB values, the claims require that the surfactant is lipophilic. Schwartzberg is relied upon for evidence that emulsifiers with HLB values of less than 6 are useful in w/o emulsions. It is the examiners understanding that w/o emulsions are generally rich in oil and lipophilic emulsifiers would be useful in these applications. Because the composition of Yokomichi is frying oil, one would anticipate that a lipophilic surfactant with an HLB of less than 6 would be the selected surfactant.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yokomichi in light of Orthoefer as applied to claims 7 & 8 above, and further in view of Schwartzberg.

The claims appear to differ from Yokomichi in light of Orthoefer in the recitation of the HLB value of the emulsifier. Schwartzberg teaches that emulsifiers with HLB values of less than 6 are useful in w/o emulsions. It is the examiners understanding that w/o emulsions are generally rich in oil and lipophilic emulsifiers would be useful in these applications. Because the composition of Yokomichi is frying oil, one would anticipate that a

lipophilic surfactant with an HLB of less than 6 would be the selected surfactant.


Claims 5, 6, 10, 11 & 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Bertoli (5,744,145) as further evidenced by Orthoefer and Swern taken together.

Bertoli discloses a lipid composition for a cosmetic product. The product could be edible because it contains a combination of rice bran oil and sesame oil (abstract). Emulsifiers are also contemplated at column 3, line 38. Orthoefer provides evidence for the composition of rice bran oil, as discussed above. In addition the phospholipids in rice bran oil are known emulsifiers. The additional plant sterol is provided by the inclusion of plant sterols from sesame oil. The composition of the blend of oils would be expected to contain the saturated fat content of claim 10. The deodorizing treatment of claims 6 and 11 is a process limitation, carrying no weight in these product claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 2-25-05
PRIMARY EXAMINER 1761